

Eric Fryson

From: Woods, Monica [WOODS.MONICA@leg.state.fl.us]
Sent: Wednesday, September 12, 2012 4:54 PM
To: Filings@psc.state.fl.us
Subject: PETITION PROTESTING PORTIONS OF THE PROPOSED AGENCY ACTION
Attachments: Petition Protesting Portions of the Proposed Agency Action.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Erik L. Saylor, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
SAYLER.ERIK@leg.state.fl.us

b. Docket No. 110200-WU

In re: Application for increase in water rates in Franklin County by
Water Management Services, Inc.

c. Documents being filed on behalf of the Office of Public Counsel

d. There are a total of 8 pages.

e. The document attached for electronic filing is: **PETITION PROTESTING PORTIONS OF THE PROPOSED AGENCY ACTION**. Thank you for your attention and cooperation to this request.

Monica R. Woods
Administrative Assistant
Office of Public Counsel
Phone #: 488-9330
Fax# :487-6419

DOCUMENT NUMBER-DATE

06157 SEP 12 02

FPSC-COMMISSION CLERK

9/12/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for increase in water rates)
in Franklin County by Water Management)
Services, Inc.)

Docket No. 110200-WU

Filed: September 12, 2012

PETITION PROTESTING PORTIONS OF THE PROPOSED AGENCY ACTION

The Citizens of the State of Florida (Citizens), by and through undersigned counsel, pursuant to Section 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code, file this protest to the Florida Public Service Commission's (Commission) Order No. PSC-12-0435-PAA-WU, issued August 22, 2012, (PAA Order). In the PAA Order, the Commission approved, in part, the requested rate increase for Water Management Services, Inc. (WMSI or Company). In support of their Petition, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 110200-WS

2. The Citizens include the customers of Water Management Service, Inc. whose substantial interests will be affected by the PAA Order because the PAA Order authorizes WMSI to collect the proposed rate increase from the customers.

3. Pursuant to Section 350.0611, Florida Statutes, the Citizens who file this Petition are represented by the Office of Public Counsel ("Citizens" or "OPC") with the following address and telephone number:

Office of Public Counsel c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. (850) 488-9330

DOCUMENT NUMBER-DATE

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4. The Citizens obtained a copy of the PAA Order via Commission email, on Wednesday, August 22, 2012.

5. At this time the disputed issues of material fact, including a concise statement of the ultimate facts alleged and those facts which Citizens contend warrant reversal and/or modification of the PAA Order, are discussed below. Pursuant to Sections 367.081 and 367.121, Florida Statutes, the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges. Adjustments should be made to the rates and charges approved by the PAA Order.

The issues delineated in and by Citizens' protest should be interpreted broadly in order to effectuate full discovery on the disputed issues of material fact and thereby allowing the parties to adequately determine the scope of the issues for consideration and determination by the Commission through a full administrative hearing. Further, Citizens' protest encompasses any additional issues logically arising from the specifically identified areas, including related issues that may arise during the process of discovery issued in this case. Further, Citizens reserve their right to fully participate in the hearing process to resolve any issues identified in any other party's protest and cross-petitions. Citizens' protest pertains to the portions of the PAA Order relating to Account 123 and increased service availability charges, as well as the failure of the PAA Order to address the unamortized rate case expense previously authorized for collection from customers by Order No. PSC-11-0010-SC-WU but not being expended by the Utility for that purpose, and unamortized gain on sale as described in Order No. PSC-11-0010-SC-WU but omitted from the PAA Order. Citizens hereby protest the following portions of the PAA Order:

- a) Cash Advances to WMSI's President and Associated Companies – Account 123.

The PAA Order recognizes that the balance in this account was \$1,215,075 as of

December 31, 2011. This is not a prudent use of Utility money collected from the ratepayer and has adversely impacted the Utility's access to funds for utility expenses. As a result of the Utility's cash management decisions, the Utility became in default on its DEP loan, has had to renegotiate the timing of debt service payments on the DEP loan resulting in nearly \$1.2 million in excess interest on the DEP loan, and has had difficulty making timely Regulatory Assessment Fee payments to the Commission. Citizens assert that the Utility's cash management decisions have detrimentally harmed the Utility and, if left unchecked, may continue to hinder the Utility's ability to meet its current and future financial obligations and, ultimately if left unresolved, may eventually harm the public health, safety, and welfare of the Utility's customers. Citizens protest all aspects of the Commission's PAA decision relating to Account 123, including but not limited to the fact the Commission did not (1) make a finding or determination of managerial imprudence or managerial negligence, (2) take proactive steps to repatriate the funds in Account 123 to Utility operations (i.e., did not order the liquidation of the so-called investments in associated companies), (3) ensure that the Utility does not continue to increase investments in Account 123, and (4) address adequately the harm to customers resulting from the Utility's cash management practices (i.e., the nearly \$1.2 million in additional interest added to the DEP loan which customers will have to pay).

- b) Previously Authorized Rate Case Expense. The Commission authorized \$229,180 in rate case expense by Order No. PSC-11-0010-SC-WU, issued

January 3, 2011, and the amortization of this expense was included in customers' rates. On or about March 14, 2012, Citizens served discovery in this docket related to the amount of rate case expense paid by the Utility to which the Utility responded on April 13, 2012. According to the Utility's response, the Utility stopped making payments to its law firm in the last case in November 2010. As of March 7, 2012, the Utility had an outstanding invoice payable to its prior law firm in the amount of \$146,399.78. *See* Utility Response to OPC First Request for Production of Documents, No. 40. In response to Staff's sixth data request, the Utility indicated it had resumed making payments to its law firm. *See* Utility Response to Staff 6th Data Request, Item 2. The Utility's response shows a \$1,000 payment made on April 16, 2012 and another \$1,000 payment on May 18, 2012. *See Id.* Assuming those payments continue at a rate of \$1,000 per month, it will take the Utility approximately 10 years to pay the principal balance of this \$146,399.78 invoice ignoring any interest accruing. There is no documentary evidence in this docket that the Utility will continue making payments to this law firm following the conclusion of this docket. Citizens are concerned that ratepayer money (collected for previously authorized rate case expense) is not being used for its authorized and intended purpose, and this action by the Utility is contrary to the statutory intent of Sections 367.081(7) and 367.0816, Florida Statutes. Citizens protest the portion of the PAA Order which continues to allow the collection and amortization of the previously authorized rate case expense from customers. Citizens protest the failure of the PAA Order to address the failure of the Utility to use authorized rate case expense for its intended purposes.

At a minimum, Citizens believe that previously authorized rate case expense by Order No. PSC-11-0010-SC-WU, should be reduced to reflect the amount of non-payment and/or slow payment by the Utility and the amortization amount approved by this PAA Order should be adjusted to reflect that reduction.

- c) **Service Availability Charges.** The PAA Order authorized an increase in service availability charges from \$1,620 to \$5,310. These higher charges are based on plant levels that include the requested pro forma plant that has yet to be placed in service and, if placed in service, the pro forma plant is subject to true-up by some later proceeding. Thus, the \$5,310 is not an accurate amount for service availability charges. Citizens further note that the PAA Order required that Utility revenues related to the pro forma plant be placed in escrow; however, it did not require any escrow accounts for increased the service availability charges. Citizens also note that the increased service availability charges will remain unchanged even if none of the requested pro forma plant is placed into service. Citizens believe that the amount of the service ability charges should be based on actual pro forma plant placed in service and not the projected or requested pro forma amount approved by the PAA Order. Citizens believe that any increase in the service availability charges should be placed in escrow to ensure that those charges collected will be used for Utility purposes and not diverted to some other non-utility purpose. In sum, Citizens protest all aspects of the PAA Order approving service ability charges because the approved service ability charges are untimely, premature, and inaccurate, and the PAA Order fails to include an escrow account provision for the increased service availability charges.

d) Unamortized Gain on Sales. By Order No. PSC-11-0010-SC-WU issued January 3, 2011, in the Utility's last rate case, the Commission found that the Utility had a net gain of \$242,040 on the sale of specific assets. The prior order stated that the gains should be amortized to the benefit of the ratepayers and amortized the net gain over five years. At this time, the customers have only received 20 months of the benefit and the PAA Order should include some provision for the customers to receive the remaining benefit. Citizens protest the failure of the PAA Order to include the remainder of the unamortized gain on sale as determined by Order No. PSC-11-0010-SC-WU.

6. Citizens reserve the right to take positions and file testimony on any additional issues raised by any other party's protest or cross-petition and issues which come to light during the pendency of this docket.

7. By Order No. PSC-12-0435-PAA-WU, protests of the PAA Order shall be filed with the clerk of the Office of Commission Clerk no later than the close of business on September 12, 2012. This Petition has been timely filed.

8. Sections 367.081, 367.0816, and 367.121, Florida Statutes, are the specific statutes that require reversal or modification of the PAA Order.

9. Citizens request that the Commission take the following actions with respect to this protest and objection to the PAA Order:

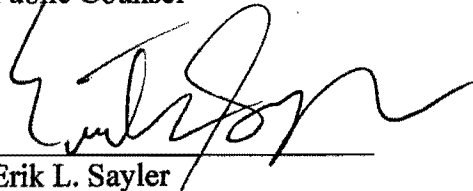
a) Establish a hearing schedule to resolve the disputed issues of material fact as described above, including any additional issues raised by a party's protest or cross-petition and on any issues which come to light during the pendency of this docket; and

- b) Determine that Citizens' protest of these disputed issues of material fact as it relates to Account 123, increased service availability charges, unamortized rate case expense, and unamortized gain on sale requires modifications of the PAA Order.

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-12-0435-PAA-WU, as provided above, and petition the Commission to conduct a formal evidentiary hearing, as required under the provisions of Section 120.57(1), Florida Statutes, at a convenient time within or as close as practical to the Utility's certificated service area.

Respectfully Submitted,

JR Kelly
Public Counsel



Erik L. Saylor
Associate Public Counsel
Florida Bar No. 29525

Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Attorney for the Citizens of the
State of Florida


CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Petition Protesting Portions of the Proposed Agency Action has been furnished by U.S. mail on this 12th day of September, 2012, to the following:

Ralph Jaeger / Martha Barrera
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Mr. Gene D. Brown
Water Management Service, Inc.
250 John Knox Road, #4
Tallahassee, Fl 32303-4234

Martin S. Friedman
Sundstrom, Friedman & Fumero, LLP
766 North Sun Drive, Suite 4030
Lake Mary, Florida 32746



Erik L. Sayler
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